IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 15780 of 2007(C)

PETITIONER:

S.JAYAKUMAR, ATTENDER,
MURUNTHAL SERVICE CO-OP.BANK LTD.NO.1814,
ANCHALUMMOOD, PERINAD P.O., KOLLAM.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:
----

1. KERALA STATE CO-OPERATIVE UNION,
SAMSTHANA SAHAKARANA BHAVAN, CHENKALCHOOLA,
THIRUVANANTHAPURAM-1, REPRESENTED BY ITS SECRETARY.

2. MURUNTHAL SERVICE CO-OP.BANK LTD.NO. 1814, ANCHALMMOOD, PERINAD P.O., KOLLAM.
REP. BY ITS ADMINISTRATOR/SECRETARY.

3. JOSHY XAVIER, PEON,
MURUNTHAL SERVICE CO-OP.BANK LTD.NO.1814,
ANCHALUMMOOD, PERINAD P.O., KOLLAM.

4. THE PRINCIPAL, CO-OP.TRAINING COLLEGE,
KOTTARAKKARA.

5. ASST.REGISTRAR OF CO-OP. SOCIETIES,
KOLLAM.

BY ADV. SRI.P.C.SASIDHARAN
SRI.JACOB SEBASTIAN
SRI.T.R.HARIKUMAR
SRI.V.G.ARUN
GOVT.PLEADER SRI.P.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE APPOINTMENT ORDER DTD. 18-06-2003.**
EXT.P2	**TRUE COPY OF THE ORDER OF THE JOINT REGISTRAR DTD. 4-7-05**
EXT.P3	**TRUE COPY OF THE ORDER REGULARISING THE PETITIONER'S APPOINTMENT.**
EXT.P4	**TRUE COPY OF THE SENIORITY LIST.**
EXT.P5	**TRUE COPY OF THE PROSPECTUS ISSUED BY THE STATE CO-OP. UNION.**
EXT.P6	**TRUE COPY OF THE RESOLUTION OF THE MANAGING COMMITTEE DTD. 19-3-2007**
EXT.P7	**TRUE COPY OF THE APPLICATION FOR THE JDC COURSE.**
EXT.P8	**TRUE COPY OF THE COUNTER AFFIDAVIT OF THE SECOND RESPONDENT DTD.27-3-07**
EXT.P9	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.9881/07**
EXT.P10	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.914/07**
EXT.P11	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.11253/07**
EXT.P12	**TRUE COPY OF THE PRELIMINARY LIST ISSUED BY R5**
EXT.P13	**TRUE COPY OF THE APPLICATION SUBMITTED BY R3 BEFORE R1**
EXT.P14	**TRUE COPY OF THE JUDGMENT DTD.8-5-07 ISSUED BY VACATION COURT.**
EXT.P15	**TRUE COPY OF THE ORDER DTD. 2-5-2007 BY THE FIRST RESPONDENT.**

RESPONDENT'S EXHIBITS

EXT.R3(A)	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY R3.**
EXT.R3(B)	**TRUE COPY OF THE DECISION OF THE SOCIETY DTD. 25-4-2007**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

\- -

W.P.(C).No. 15780 OF 2007

\- -

Dated this the 22nd day of June, 2007

JUDGMENT

Petitioner, an Attender challenges Ext.P15 order. By Ext.P15 order the first respondent has found that by virtue of the fact that the third respondent is senior in age to the petitioner under Ext.P5 prospectus, it is the third respondent who is to be admitted to the J.D.C. According to the petitioner, petitioner is senior to the third respondent placing reliance on Ext.P4 seniority list. Ext.P5 is the notification issued by the first respondent setting out the terms for seeking admission to JDC course. By Ext.P6 the society decided to consider the case of the petitioner and forward the application of the petitioner finding him to be the eligible person. However necessary certificates were not forthcoming and the petitioner approached this court. Ext.P9 is the judgment delivered by the learned Single Judge. Therein the third respondent is also a party. This court proceeded to direct respondents 1 and 2 therein namely, Assistant Registrar of Co-operative Society (General and Audit) to

issue necessary certificates so that the petitioner can apply for the post next day. In the course of the said finding, learned Single Judge stated that the third respondent has signed Ext.P4 seniority list accepting the seniority position. Thereafter the matter was carried in appeal by the third respondent culminating in Ext.P10 judgment dated 04/04/2007 leaving it open to the fourth respondent to approach the Joint Registrar. Prior to the date of Ext.P11 judgment, the learned Single Jude who delivered Ext.P9 judgment also considered and disposed of another writ petition filed by the third respondent, wherein the third respondent sought the consideration of Ext.P8 representation filed before the first respondent. Learned Single Judge proceeded to refer to Ext.P9 judgment and found that Ext.P7 resolution is not challenged. The court also proceeded to held as follows:

> "That being so, it is quite clear that at this point of time no purpose would be served by directing the 1st respondent to dispose of Ext.P8 since the petitioner has no case anywhere that he is entitled to be preferred over the said Jayakumar for selection for sending to undergo the J.D.C. course. Since only one employee can be sent, I do not find any merit in this writ petition and accordingly the same is dismissed."

2. Thereafter vide Ext.P14 judgment dated 08/05/2007, another learned Single Judge disposed of the writ petition filed by the third respondent. Ext.P14 judgment culminated in the passing of Ext.P15 order, is the case of the petitioner.

3. Counter affidavit is filed by the third respondent, wherein he would submit that the matter is governed by the prospectus which determines the seniority in the facts of this case. It is his case that the role of the society is limited to the forwarding of the applications submitted by the candidates to the managing committee of the State Co-operative Union. It is his further case that, which the petitioner relies on is the preliminary list and petitioner cannot claim right only on the basis of the same. It is the State Co-operative Union which prepares the select list if there is any dispute between the two. It is stated that Ext.P8 referred to in Ext.P11 judgment which is produced as Ext.R3(a) is a representation to the Joint Registrar and it has no direct connection with the issue raised by the petitioner before the Joint Registrar. He would also point out that Ext.P11 is prior to Ext.P10 judgment in the Writ Appeal. In the appeal memorandum the third respondent had referred to W.P.(C)No.11253/2000 and the dismissal of the same, it is

stated. It is stated that on the basis of the Ext.P10 the Joint Registrar considered the representation and issued order dated 24/04/2007 directing the administrator to consider the application of the third respondent and forward the same to the State Co-operative Union. It is then R3(b) dated 25/04/2007 was issued to forward the application of the third respondent by the Society. Thereupon, the third respondent approached this court and obtained Ext.P14 judgment. By Ext.P14 judgment this court directed that if the petitioner had applied in time before his employer society, the consequential delay for which the petitioner is not responsible shall not stand in the way of the petitioner being considered for the said course, other facts remaining equal.

4. Learned counsel for the first respondent would submit that in the light of Ext.P14 judgment as the application of the third respondent was received though belatedly and the third respondent is admittedly senior in age to the petitioner that the application of the third respondent was considered and allowed. Learned counsel for the petitioner argued various contentions including that the application was not addressed to the Principal. It is submitted that the application of the third respondent was not received in time and belated applications are to be rejected.

5. What is involved in this is the right to be included in the course for the purpose of seeking promotion to the higher post. I find that this is a case where both parties were litigating and both are working as Attender and Peon and the matter is not strictly governed by any statutory prohibition. In the facts and circumstances of this case, there will be direction to the first respondent to permit both the petitioner and the third respondent to undergo the course of JDC for academic year 2007-08. I make it clear that it is only in the special circumstances of this case that this direction is being given as I feel that it will be an order which go to obviate the obvious heart burn of both the employees drawn from the lowest grades.

In such circumstances, there will be a direction to the first respondent to accommodate the petitioner and the third respondent in the JDC course for the academic year 2007-2008.

(K.M.JOSEPH, JUDGE)

sv.